

2014 WL 5391750 (N.Y.Sup.) (Trial Pleading)
Supreme Court of New York.
Bronx County

STEVEN HERNANDEZ, Plaintiff,

v.

THE CITY OF NEW YORK, The New York City Police Department, New York City Police Officer **Korey Noak** Shield #003050, Officers Jane and John Doe Who Were at the Scene Whose Names are Currently Unknown, Sgt. in Charge of Arrest Under Docket #2013BX021154 and Arrest #B13625192 named herein as John/Jane Doe I, Defendant.

No. 303662-2014.
June 7, 2014.

Summons

Law Offices of Morris & Torres, P.C., 888 Grand Concourse, Ste 1-H, Bronx, New York 10451, (718) 618-7511, for plaintiff Plaintiff designates Bronx County as the Place of Trial. The basis of venue is where the tort arose and Plaintiff's residence.
[REDACTED]

To The Above Named Defendant:

YOU ARE HEREBY SUMMONED: to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's Attorney within 20 days after the service of the Summons, exclusive of the day of service (or within 30 after service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Defendant's address:

CORPORATION COUNSEL OF THE CITY OF NEW YORK

100 Church Street

New York, New York 10007

N NEW YORK CITY POLICE OFFICER **KOREY NOAK** SHIELD #003050 One Police Plaza, Room 1100 New York, New York 10038

SGT. IN CHARGE OF ARREST UNDER DOCKET #2013BX021154 AND ARREST #B13625192 NAMED HEREIN AS JOHN/JANE DOE I One Police Plaza, Room 1100 New York, New York 10038

VERIFIED COMPLAINT

PLAINTIFF, by his attorney, FELICE V. TORRES as and for his VERIFIED COMPLAINT, alleges upon information and belief as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times mentioned, Plaintiff STEVEN HERNANDEZ was and is a resident of Bronx County, City and State of New York.
2. At all times mentioned, Defendant CITY OF NEW YORK, was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.
3. On or about the 17th day of May 2013 and then again on 8th day August 2013 and within ninety (90) days after the claim herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.
4. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.
5. The Plaintiff has complied with the request of the municipal Defendants for an oral examination pursuant to Section SO-H of the General Municipal Law and/or the Public Authorities Law and said oral examination was held on October 18, 2012.
6. Upon information and belief, at all times mentioned, Defendants NEW YORK CITY POLICE OFFICER **KOREY NOAK** SHIELD #003050, OFFICERS JANE AND JOHN DOE WHO WERE AT THE SCENE WHOSE NAMES ARE CURRENTLY UNKNOWN, SGT. IN CHARGE OF ARREST UNDER DOCKET #2013BX021154 AND ARREST #B13625192 NAMED HEREIN AS JOHN/JANE DOE I, were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, THE CITY OF NEW YORK.
7. On or about April 10, 2013 at approximately 2 p.m. in the vicinity of 895 Irvine Street County of the Bronx, State of New York the Defendants jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff STEVEN HERNANDEZ, in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A SECOND CAUSE OF ACTION

8. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "7" with full force and effect as though set forth at length herein.
9. On or about April 10, 2013 at approximately 2 p.m. in the vicinity of 895 Irvine Street County of the Bronx, State of New York the Defendants, jointly and severally did place Plaintiff STEVEN HERNANDEZ in imminent fear of physical contact by approaching the Plaintiff with loaded firearms, outstretched limbs, and other objects which they used to physically seize and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION

10. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs “1” through “9” with full force and effect as though set forth at length herein.

11. On or about April 10, 2013 at approximately 2 p.m. in the vicinity of 895 Irvine Street County of the Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on DOCKET No. 2013BX021154. The Plaintiff was thereafter held in custody over the course of one (1) week before he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement

AS AND FOR A FOURTH CAUSE OF ACTION

12. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs “1” through “11” as it set forth at length herein.

13. Upon information and belief, on or about April 10, 2013 and from that time until the dismissal of charges on or about July 31, 2013 by the Honorable Judge presiding at, Bronx Supreme Court, Defendants, NEW YORK CITY POLICE OFFICER **KOREY NOAK** SHIELD#003050, OFFICERS JANE AND JOHN DOE WHO WERE AT THE SCENE WHOSE NAMES ARE CURRENTLY UNKNOWN, SGT. IN CHARGE OF ARREST UNDER DOCKET #2013BX021154 AND ARREST #B13625192 NAMED HEREIN AS JOHN/JANE DOE I deliberately and maliciously prosecuted plaintiff, Steven Hernandez, an innocent man without any probable cause whatsoever by filing or causing a felony complaint to be filed in the criminal court of the City of New York, Bronx County for the purpose of falsely accusing the plaintiff of violations of the criminal law of the State of New York.

14. The defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the plaintiff.

15. The commencement of these criminal proceedings under Docket No. 2013BX021154 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the defendants.

16. As a result of the malicious prosecution, plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity, and frustration of an unjust criminal prosecution. The plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A FIFTH CAUSE OF ACTION

17. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs “1” through “16” as it set forth at length herein.

18. Defendants NEW YORK CITY POLICE OFFICER **KOREY NOAK** SHIELD #003050, OFFICERS JANE AND JOHN DOE WHO WERE AT THE SCENE WHOSE NAMES ARE CURRENTLY UNKNOWN, SGT. IN CHARGE OF ARREST UNDER DOCKET #2013BX021154 AND ARREST #B13625192 NAMED HEREIN AS JOHN/JANE DOE I were at all times relevant, duly appointed and acting officers of the City of New York Police Department.

19. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

20. Plaintiff STEVEN HERNANDEZ is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to [42 United States Code, Section 1983](#) and [42 United States Code, Section 1988](#).

21. The Defendant CITY OF NEW YORK is a municipality duly incorporated under the laws of the State of New York.

22. On or about April 10, 2013 the Defendants, armed police, while effectuating the seizure of the Plaintiff STEVEN HERNANDEZ, did search, seize, assault and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested and maliciously prosecuted without the Defendants possessing probable cause to do so. Further, the plaintiff was subjected to a warrantless strip search with cavity inspection even though the defendants did not possess a reasonable and/or probable cause to believe that the plaintiff had secreted contraband in or on his person.

23. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

a. Freedom from assault to his person;

b. Freedom from battery to his person;

c. Freedom from illegal search and seizure;

d. Freedom from false arrest;

e. Freedom from the use of excessive force during the arrest process.

24. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States-Constitution.

25. The direct and proximate result of the Defendants' acts is that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A SIXTH CAUSE OF ACTION

26. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "25" with full force and effect as though set forth at length herein.

27. Defendant CITY OF NEW YORK has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.

28. The City of New York was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not be used where a criminal defendant is not resisting arrest.

29. THE CITY OF NEW YORK is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:

1. Probable cause must be present before an individual such as the Plaintiff herein can be arrested.
2. Excessive force cannot be used against an individual who does not physically resist arrest
3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.
4. An individual such as the plaintiff herein cannot be subjected to a strip search with cavity inspection unless the police possess legal cause and/or have a reasonable suspicion and/or probable cause that the plaintiff has secreted contraband in or on his person.

30. The foregoing acts, omissions and systemic failures are customs and policies of the CITY OF NEW YORK which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff, commit an assault/battery to his person, and denied him prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

AS AND FOR A SEVENTH CAUSE OF ACTION

31. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "30" as it set forth at length herein.

32. Defendant City of New York was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officers Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these officers were not suitable to be hired and employed by the CITY OF NEW YORK and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

WHEREFORE, Plaintiff demands judgment against the Defendants, together with the costs and disbursements of this action in the amount of damages greater than the jurisdictional limit of any lower court that would otherwise have jurisdiction, together with attorneys' fees and costs for bringing this case and punitive damages.

Dated: Bronx, New York

June 30, 2014

Yours etc.,

<<signature>>

LAW OFFICES OF MORRIS & TORRES, P.C.

Attorneys for Plaintiff

888 Grand Concourse, Ste 1-H

Bronx, New York 10451

(718) 618-7511

TO:

CORPORATION COUNSEL OF THE CITY OF NEW YORK

100 Church Street

New York, New York 10007

N NEW YORK CITY POLICE OFFICER **KOREY NOAK** SHIELD #003050

One Police Plaza, Room 1100

New York, New York 10038

SGT. IN CHARGE OF ARREST UNDER DOCKET #2013BX021154 AND ARREST

#B13625192 NAMED HEREIN AS JOHN/JANE DOE I

One Police Plaza, Room 1100

New York, New York 10038

INDIVIDUAL VERIFICATION

Steven Hernandez, being duly sworn deposes and says that the deponent is the Plaintiff in the within action; that deponent has read the foregoing **SUMMONS AND VERIFIED COMPLAINT** and knows the contents thereof; that the same are true to deponents own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

<<signature>>

Steven Hernandez

Sworn to before me on this 3rd day of July, 2014

<<signature>>

Notary Public